



COLORADO

Department of Transportation

Division of Project Support
4201 East Arkansas Avenue, 4th Floor
Denver, CO 80222-3400

MEMORANDUM

DATE: JANUARY 5, 2018
TO: TRANSPORTATION COMMISSIONERS
FROM: JOSHUA LAIPPLY, P.E. - CHIEF ENGINEER
KATHY YOUNG - FIRST ASSISTANT ATTORNEY GENERAL
SUBJECT: AMERICANS WITH DISABILITIES ACT CURB RAMP ACQUISITION PILOT PROGRAM

Purpose

To review the proposed Americans with Disabilities Voluntary Act Curb Ramp Acquisition Pilot Program.

Action

To pass a resolution authorizing CDOT to deviate from Policy Directive 1301.0 and the Uniform Act in order to conduct a streamlined right-of-way acquisition Pilot Program for Americans with Disabilities Act compliant curb ramp construction.

Background

Title II of the Americans with Disabilities Act (ADA) requires that state and local governments make pedestrian routes in the public right-of-way accessible to individuals with disabilities. A critical part of achieving this accessibility is constructing curb ramps wherever a walkway crosses a curb. The curb ramps must meet criteria related to slope grade, landing area size, and other areas in order to be functionally accessible to individuals with disabilities. There are approximately 20,000 curb ramps in the Colorado State Highway System and the CDOT Executive Management Team has prioritized making all of these ramps functionally accessible within five years.

Based on a 2013 survey, more than 15,000 functionally accessible curb ramps will need to be constructed in the next five years. Under standard project delivery methods, ADA-compliant curb ramps are constructed whenever a roadway is altered, such as during a resurfacing project. However, CDOT will only be able to construct approximately 40% of the required curb ramps in five years by following these standard project delivery methods. As a result, innovative processes such as what is proposed in this Pilot Program will be necessary to meet this deadline.

Many existing curb ramps are located on privately owned property. Furthermore, an ADA-compliant curb ramp will often require more area than an existing curb ramp in order to be sufficiently accessible, some of which may be located on private property. Even if additional area is not required, CDOT may still need to access private property during construction. In each of these cases, CDOT must acquire temporary or permanent property interests from private landowners and follow the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act) and Policy Directive 1301.0 during the acquisition process.

The Uniform Act includes requirements such as determining the fair market value of each acquisition, surveying each property and allowing for a sufficient negotiation period for the landowner to consider offers. Policy Directive 1301.0 requires that CDOT obtain authorization from the Transportation Commission prior to negotiating with landowners. Combined, these requirements potentially result in a cost of more than \$10,000 per curb ramp for right-of-way acquisition alone. We hope to receive permission to deviate from these requirements in order to reduce the time and costs and facilitate the construction of ADA compliant curb ramps.

Details

The proposed Pilot Program will be applicable for curb ramps on projects with no Federal participation. The proposed process will be used when either entry onto private property is needed to construct a curb ramp, or if a portion of the curb ramp will be located on private property. The process for the two scenarios will have many of the same elements, with some differences in documentation presented to the landowner.

When only entry onto private property is required for constructing a curb ramp, CDOT will present the landowner with an agreement that gives CDOT the right of entry to construct a curb ramp and an exhibit showing their property and the approximate curb ramp location. The agreement will contain the same offer amount for all landowners on the project and



will be based on the estimated highest value acquisition on the project. Signing the agreement will be voluntary and in no case will CDOT use eminent domain power during the Pilot Program. If a landowner does not sign the agreement, the curb ramp will still be constructed on a future project.

If a portion of the curb ramp will be located on private property, the same steps will take place as the first scenario. In addition to those, the landowner will be presented with a Permanent Easement (PE) agreement covering the portion of the curb ramp on the private property. The PE will not be surveyed, but the dimensions and general description will be estimated using GIS, subdivision maps and county assessor data. The Exhibit presented to the landowner will also include the general location of the PE.

Benefits

If successful, the Pilot Program will benefit CDOT, landowners and the travelling public. The streamlined acquisition process may lower acquisition costs by thousands of dollars per curb ramp by eliminating much of the survey and appraisal staff time associated with a traditional acquisition. Furthermore, most landowners will receive a higher offer under the Pilot Project than if their property was acquired under the traditional Uniform Act process. The new curb ramp will also be an improvement for the landowner since the property will be more accessible to the public. The travelling public will also enjoy the benefits of curb ramps being constructed over a much shorter time frame.

Attachments

Attachment A: Resolution Authorizing Pilot Program



Resolution # TC-18-X-X

Approval of CDOT’s ADA Voluntary Curb Ramp Acquisition Pilot Program and Permission for CDOT to Deviate from Policy Directive 1301.0 for Pilot Program

Approved by the Transportation Commission on _____, 2018

WHEREAS, pursuant to § 43-1-106(8)(a), C.R.S., the Colorado Transportation Commission ("Commission") is authorized to formulate general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the State; and

WHEREAS, the Colorado Department of Transportation (“CDOT”) must comply with the federal Americans with Disabilities Act (“ADA”), and this compliance includes, but not limited to, construction of functionally accessible curb ramps on CDOT roadways; and

WHEREAS, CDOT constructed curb ramps before and after the passage of the ADA in 1990 and there are approximately 20,000 curb ramps along Colorado’s state highway system; and

WHEREAS, approximately 15,000 of CDOT’s existing curb ramps must be updated to meet the Proposed Right-of-Way Accessibility Guidelines that CDOT has adopted, and that the Federal Highway Administration (“FHWA”) has approved, for curb ramp standards; and

WHEREAS, CDOT’s Chief Engineer issued a Chief Engineer’s Memorandum on September 12, 2016 to CDOT staff outlining CDOT’s Executive Management Team’s pursuit of an accelerated curb ramp improvement and construction programs with a focus on upgrading ramps not scheduled to be addressed during regular engineering project delivery over the next five years (“CDOT 5-year Plan”); and

WHEREAS, the Transportation Commission supports all of CDOT’s curb ramp improvement and construction efforts and broader accommodation efforts and has specifically supported CDOT’s 5-year Plan for accelerated curb ramp improvement and construction by approving \$85 million of dedicated funding for curb ramp improvement and construction; and

WHEREAS, improved or newly constructed curb ramps may have to be built on private property and access to and easements over private property will be needed to improve or construct the ramps; and

WHEREAS, under existing right-of-way processes, CDOT's acquisition of property for curb ramps will be significant, costly and time consuming; and

WHEREAS, CDOT staff has presented the Transportation Commission with information on an initiative to streamline the property acquisition process for private property that is needed for curb ramp improvements and construction ("Pilot Program"); and

WHEREAS, the Pilot Program is a voluntary program for landowners, will not use federal funds and has been approved by the Federal Highway Administration and the Colorado Attorney General's Office; and

WHEREAS, the Pilot Program has been designed to reduce the time and cost for right-of-way needed for the curb ramp acquisitions only, and the Pilot Program deviation from existing processes will be through voluntary participation in lieu of existing processes; and

WHEREAS, the Commission previously adopted Policy Directive 1301.0, "Transportation Commission Guidelines to Determine Whether Acquisition of Property for a CDOT Highway Project Will Serve the Public Interest," which sets forth the type of information CDOT staff, including the Chief Engineer, need to present to the Commission to assist Commissioners in making a public policy determination pursuant to §43-1-106(8)(a), C.R.S., and the *Amerco Real Estate Co*, 380 P.3d 117 (Colo. 2016), opinion; and

WHEREAS, the Pilot Program will not obtain any temporary easements from landowners and will instead gain access to private property through a voluntary right-of-entry agreement that will be freely entered into by the landowner(s), and for which the landowner(s) will be compensated, and the Commission is not consulted on right-of-entry agreements which is a common CDOT pre-construction tool; and

WHEREAS, if CDOT acquires voluntary permanent easements from landowners during the Pilot Program, CDOT will pay these landowners in a particular area the same amount based on the estimated highest value acquisition on the project; and

WHEREAS, under the Pilot Program, unlike CDOT's existing process, the Commission will not receive a Chief Engineer's report for the permanent easements and will not receive right-of-way plans and legal descriptions for each easement; however, under the Pilot Program, the Chief Engineer and/or

CDOT staff will present sufficient information to the Commission regarding permanent easements for the Commission to determine whether the properties are needed in the public interest and in order for CDOT to comply with 43-1-106(8)(a), C.R.S., and the *Amerco* decision; and

NOW THEREFORE BE IT RESOLVED, the Commission hereby approves of and directs CDOT to move forward with the CDOT ADA Voluntary Curb Ramp Acquisition Pilot Program to streamline the voluntary property acquisition process for private property that is needed for curb ramp improvements and construction, subject to future Transportation Commission public interest findings on a project-by-project basis.

NOW THEREFORE BE IT FURTHER RESOLVED, in an effort to significantly reduce the time and cost and to streamline the process for obtaining permanent easements from willing landowners, the Commission hereby allows CDOT staff to deviate from Policy Directive 1301.0 for CDOT's ADA Voluntary Curb Ramp Acquisition Pilot Program.

Herman Stockinger, Secretary
Transportation Commission of Colorado

Date